

Robinson v Banks

2008 NY Slip Op 32110(U)

July 25, 2008

Supreme Court, New York County

Docket Number: 0103330/2008

Judge: Shirley Werner Kornreich

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: KORNREICH
Justice

PART 54

ROBINSON, SHEILA, ETAL

INDEX NO. 103330/08

MOTION DATE 5/8/08

- v -

REVENUD BANKS, ETAL

MOTION SEQ. NO. 01

MOTION CAL. NO. _____

The following papers, numbered 1 to 3 were read on this motion to/for Article 78

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	<u>1</u>
Answering Affidavits — Exhibits _____	<u>2</u>
Replying Affidavits _____	<u>3</u>

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

MOTION IS DECIDED IN ACCORDANCE WITH ACCOMPANYING MEMORANDUM DECISION AND ORDER.

FILED
JUL 29 2008
NEW YORK COUNTY CLERKS OFFICE

UNFILED JUDGMENT
This judgment is to be filed with the County Clerk and notice of filing is to be given to the parties. The parties must appear in person at the Judgment Clerk's Desk (Room 141B).

Dated: 7/25/08

[Signature]
HON. SHIRLEY WERNER KORNREICH
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
SHEILA ROBINSON, EVELYN ROBINSON,
MICHELLE ROBINSON, ARNEAL JONES,
LYSA JONES, LINDA JONES, ANN KINGSBERRY,
LAURIE A. KINGSBERRY, DEBORAH WALLACE,
GWENDOLYN KINGSBERRY, NATHANIEL FORD,
WHITNEY FORD, ELDER ROLAND ROBINSON,
KAREN BOWMAN, SHARON LANE, MARSHA
GAILLARD, BEN BUTLER, RUTH V. SHARP,
SHARON CLARK, BRENDA MCCOY, JEROME
CORBETT, DIANE OATMAN, KAREN LANE,
TANESSIA BRYANT, JANICE GREEN, SHELLY
KINGSBERRY,

Index No.: 116128/05

DECISION & ORDER

Petitioners,

-against-

REVEREND DR. TOMMY BANKS, SYLVESTER
KINGSBERRY, ROBERT JORDAN,

Respondents.

-----X
KORNREICH, SHIRLEY WERNER, J.:

Petitioners contend they are current members of Progressive Baptist Church (the Church). They seek an order: removing respondents from their respective offices at the Church; directing respondents to turn over all records, bank accounts, assets, and property of the Church to petitioners to be held in trust for all members of the Church; and awarding petitioners costs, including reasonable attorneys' fees.

Factual Background

This Article 78 arises from a prolonged dispute over Church leadership and management. The Church is an independent, religious corporation. It follows Baptist teachings and practices but is not aligned with any national organization and is not subject to any rules or regulations outside of its own. It was founded around 1950 and is subject to a constitution (the Constitution)

drafted at approximately the same time. Respondent Reverend Dr. Tommy Banks, Jr. has been the pastor and spiritual leader of the Church since November 27, 2005. Respondent Robert Jordan has been a deacon of the Church since 1971. Respondent Sylvester Kingsberry has been a deacon of the Church since 1988.

Petitioner's Submissions

Petitioners contend that the Church has a membership of 40 to 50. They recently created an unofficial group outside of the Church, named Concerned Members of Progressive Baptist Church (CMPBC). CMPBC has approximately 30 members, all of whom are allegedly members of the Church, and the group claims it represents more than two-thirds of the Church's membership. They provide no evidence to prove their membership in the Church or of their size relative to the entire congregation.

Petitioners further claim that all 30 members of CMPBC voted to remove respondents from their offices on February 22, 2007 and that respondents have refused to resign. They supply minutes from several of the group's meetings as evidence. The minutes of the meetings demonstrate concern with the leadership of the Church, but do not provide evidence of a vote on dismissal or of a meeting on February 22. Order, Exhibit B. Petitioners do provide the April 20, 2007 termination letters that CMPBC sent to each of respondents. Order, Exhibit C, D, E. Each letter "petitions the resignation" of a respondent for a myriad of violations of the Constitution.

The violations and improprieties alleged include: not holding the minimum four yearly meetings; refusal to provide financial statements to the congregation; unwarranted dismissal of Church officers; creating an atmosphere of hostility; changing worship times without notification; denying access to the Church; and elimination of Church programs and services

including Youth Sunday, Sunrise Service, Watch Night Service, the Church Bulletin, the Church choir, Morning Devotion, and Testifying.

The Constitution describes the procedure for becoming and expelling a member. The Church has a candidate: “1. Come before them. 2. Give their experience. 3. Make their testaments.” Order, Exhibit A, Art. II, §1. Admission to the Church can then come: “1. by baptism, 2. by a letter, 3. by Christian experience.” The Constitution sets out, in Article II, §2, that: “Any member who becomes delinquent in giving their [*sic*] offering or attendance without reasonable excuse for an undesirable period of ninety days (90) will have to come before the Board of Deacons with an explanation.” The Constitution provides for the expulsion of members if they “unite with other denominations” or by a two-thirds vote, but a person may be readmitted to the Church on “satisfactory evidence of fitness.” Art. V, §2.

Article III, §3 of the Constitution provides that: “Both pastor and Deacons are properly elected for unlimited terms of service. The relationship will continue so long as there should be mutual satisfaction.” The Constitution does not provide the procedure for the choosing of a pastor beyond the requirement of an election. The Constitution also outlines the processes for removing pastors and deacons, which presumably govern whether “mutual satisfaction” remains. Article IV, §1 states that: “The relationship between pastor and the church may be dissolved at the option of either by: 1. Giving three months notice. 2. Mutual consent.” It does not explain who is to give notice. The Constitution sets out separate procedures for removing deacons.

Article IV, §2 provides:

A Deacon may be asked to resign if he: 1. Obstructs church work. 2. Proves to be more hindrance than help in church. 3. 2/3 of voting necessary to obtain resignation. 4. All other resignations shall be in writing and be presented to the pastor and officers. They in turn will present it to the members.

It requires a quorum for meetings, which is to consist of at least 13 members and requires the

presence of the pastor. Art. VI, §6.

Respondents' Submissions

Respondents claim that petitioners failed to support the Church's ministry, give offerings, and regularly attend services. Based on this, and the fact that petitioners are not "documented regular tithing attendees," respondents issued letters to some of petitioners. Lisa Jones and Brenda McCoy were informed that their membership was "limited," and Jones was stripped of her duties as an usher by letters from respondent Banks. Opposition, Exhibit C. One of the Robinson petitioners was told she no longer was authorized to engage in transactions on behalf of the Church by a letter from respondent Pastor Banks, respondent Robert Jordan, respondent Sylvester Kingsberry, and non-party Maxine Jordan, a Church clerk. *Id.*

Respondents submit a letter from respondent Kingsberry, Maxine Jordan, and non-party Trustee Maxine Taylor inviting respondent Banks to become pastor of the Church. Opposition, Exhibit B. The letter indicates the invitation was offered after a vote of the majority of the congregation. A letter from respondent Banks accepting the position is also attached. *Id.*

Respondents supply two membership rosters, one pre-dating Pastor Banks' arrival and one that purportedly is current. Opposition, Exhibit D. The lists are unauthenticated, and respondents provide no evidence to validate them. The original list has 38 members, including six children. It includes petitioners Sheila Robinson, Evelyn Robinson, Arneal Jones, Lysa Jones, Linda Jones, Ann Kingsberry, Deborah Wallace, Gwendolyn Kingsberry, Nathaniel Ford, Karen Lane, and Ruth V. Sharp. It lists petitioners Elder Roland Robinson, Ben Butler, Brenda McCoy, Diane Oatman, and Shelly Kingsberry as members who voluntarily resigned at some time after the making of the list, revealing that the list has been modified by someone. It includes petitioner Whitney Ford as a youth member and petitioner Janice Green as a member

who moved out of the area. It excludes petitioners Michelle Robinson, Laurie A. Kingsberry, Karen Bowman, Sharon Lane, Marsha Gaillard, Jerome Corbett, and Tanessia Bryant. The newer list includes only those who pay the tithe and has 20 members, including four children, plus three members who allegedly are in the process of joining. It excludes all petitioners except Sharon Clark. It claims Clark was reinstated in February 2006 but that she later “joined with Sheila Robinson and group.” All respondents are on both lists.

Petitioners’ Order to Show Cause

A. Parties’ Arguments

Petitioners claim that respondents were properly voted out of office according to the Constitution. Respondents maintain respondents are not current members of the Church, arguing that the letters limiting membership were ones of dismissal. Respondents also argue that the evidence presented does not justify court intrusion into internal corporate affairs.

B. Discussion

An Article 78 proceeding can be used to enforce the internal rules of private corporations against them. *Matter of Caso v. New York State Pub. High School Athletic Assn.*, 78 A.D.2d 41, 45 (4d Dept. 1980). This includes compelling religious organizations to follow their bylaws. *Matter of Eisenberg v. Fauer*, 25 Misc.2d 98, 100 (Sup Ct, Kings County 1960). The general requirement to exhaust administrative remedies prior to coming before the court need not be followed in such an action. *Caso, supra*, 78 A.D.2d at 45-46. More specifically, the court can adjudicate civil disputes, including membership issues, between religious parties or corporations without violating the First Amendment, so long as the judgment is based on “neutral principles of law.” *Matter of Congregation Yetev Lev D’Satmar Inc. v. Kahana*, 9 N.Y.3d 282, 286 (2007). Neutral principles of law can include relying on documents like a congregation’s bylaws if they

do not require ecclesiastical interpretation. *Id.* Ordinarily, however, courts should not interfere in the internal affairs of a not-for-profit corporation without some showing of substantial wrongdoing or fraud. *Insalaco v. Local 2060, Am. Fedn. of State, County & Mun. Empls., AFL-CIO*, 77 A.D.2d 813, 814 (4d Dept. 1980); *Matter of Gilheany v. Civil Serv. Empls. Assn.*, 59 A.D.2d 834, 836 (3d Dept. 1977).

Not-for-Profit Corporation Law is meant to apply to religious corporations unless it directly conflicts with Religious Corporations Law; when there is merely tension, the two chapters are to be read in a complementary fashion. *Rector, Church Wardens & Vestrymen of St. Bartholomew's Church v. Committee to Preserve St. Bartholomew's Church*, 84 AD2d 309, 312-314 (1st Dept. 1982). Religious Corporations Law §4(a) determines the age qualification necessary to vote in a corporate meeting, providing that:

persons, otherwise qualified to vote, shall be of full age unless (1) the age qualifications for voting at corporate meetings are fixed by or pursuant to an applicable provision in articles three through nineteen of this chapter, or (2) in the absence of such provision, the certificate of incorporation or a by-law adopted by the members of such corporation specifies an age, less than full age but not less than the age of sixteen years, at which persons otherwise qualified to vote at corporate meetings, shall be entitled to vote for all purposes or as to particular types or classes of matters to be acted on at such meetings.

Religious Corporations Law §133 sets out the requirements for a special meeting in a Baptist Church. A special meeting can be called by the board of trustees or upon the written request of at least ten qualified voters in the Church. Notice requires the time and place of special meetings of Baptist Churches to be publicly read by a minister or trustee of the Church the two Sundays prior to the meeting. Alternatively, notice can be posted conspicuously on the outer entrance of the Church and mailed to each congregation member two weeks before the meeting.

The bylaws of a not-for-profit corporation form the contract between the corporation and its members. *Procopio v. Fisher*, 83 A.D.2d 757, 758 (4d Dept 1981); *Matter of George v. Holstein-Friesian Assn. of Am.*, 238 N.Y. 513, 523 (1924). Ambiguity in the bylaws allows for

judicial construction, as long as construction does not relate to ecclesiastical matters. *Jacobson v. Moskowitz*, 27 N.Y.2d 67, 69 (1970).

Here, although no bylaws exist, the Constitution outlines the governance of the Church. However, ambiguities and deficiencies exist as to the mechanism for removal of both the pastor and deacons. Not-for-Profit Corporation Law §714(a) details the process for the removal of officers:

Any officer elected or appointed by the board may be removed by the board with or without cause. An officer elected by the members or a class of members may be removed, with or without cause, only by the vote of the members or such class of members, but his authority to act as an officer may be suspended by the board for cause.

As Pastor Banks was elected by a majority of the congregation, he must be removed by a majority vote of the congregation. There is no evidence of such a vote or of the required timely notice, or for that matter, who or how many make up the Church membership. Petitioners' motion to remove respondent Pastor Banks from office, therefore, is denied. Moreover, on the record submitted, the respondent deacons have not been terminated. Deacons can be "asked to resign" if they obstruct Church work or if there is "two-thirds of voting necessary to obtain resignation." There is no evidence of a two-thirds vote taking place. Consequently, petitioners' motion to remove Deacons Kingsberry and Jordan must be denied. The vote by CMPBC certainly cannot qualify as an appropriate vote to remove respondents from office. It violated the requirements of Religious Corporations Law §133. A special meeting was not called for in writing by ten qualified voters, time and location were not read by a minister or trustee, and petitioners did not use §133's alternate notice measures. As a result, petitioners' motions for costs and to transfer the Church's assets to them to be held in trust are denied.

Any potential CMPBC vote also violated the Constitution's rules requiring a quorum for a meeting, as the pastor must be one of thirteen Church members present for a quorum to exist.

If the pastor refuses to call or participate in a future meeting after notice and proper procedure according to the Constitution, petitioners have recourse. They can seek a court order compelling such a meeting under the combined authority of Not-for-Profit Corporation Law §603(c) and Religious Corporations Law §5. *Rector, supra*, 84 AD2d at 312-313.

In addition, applying neutral principles of law, the Constitution did not give the Board of Deacons power to expel any members for not paying the tithe, poor attendance, or any of the other reasons cited by respondents. The Constitution only requires absentee members to come forth with an explanation to the Board of Deacons for the conduct cited. It provides a separate process for expulsion that, again, requires a two-thirds vote of the congregation unless the member has joined another denomination. In fact, the letters sent by respondents to petitioners do only limit membership and strip duties and never expressly expel any members from the Church.

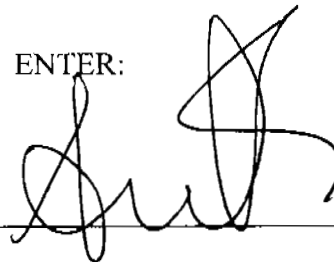
No petitioner has been expelled by a vote or has joined another denomination. Hence, all petitioners listed on the original membership roster provided by respondents are still active Church members. This includes Sheila Robinson, Evelyn Robinson, Arneal Jones, Lysa Jones, Linda Jones, Ann Kingsberry, Deborah Wallace, Gwendolyn Kingsberry, Nathaniel Ford, Karen Lane, and Ruth V. Sharp. Petitioners that supposedly “voluntary resigned” because of their association with CMPBC are also active Church members. This includes Elder Roland Robinson, Ben Butler, Brenda McCoy, Diane Oatman, and Shelly Kingsberry. Youth member Whitney Ford is an active member to whatever extent Church custom allows, as he was also included in the original list. He would not, however, have voting powers according to Religious Corporations Law §4(a). Janice Green is an active member, as long as she has not joined another denomination as a result of her alleged move. Sharon Clark is an active member, as she was

only excluded from the original list because of her connection to CMPBC. The court has no ability to judge the status of petitioners Michelle Robinson, Laurie A. Kingsberry, Karen Bowman, Sharon Lane, Marsha Gaillard, Jerome Corbett, and Tanessia Bryant, as they are not included on either list and petitioners have not provided any evidence to prove their prior membership status. Nevertheless, if they were members at one point, have not joined another denomination, and have not been voted out by two-thirds of the congregation, they would remain active members of the Church.

In sum, petitioners have not demonstrated that a proper vote to dismiss respondents occurred. Accordingly, it is ORDERED and ADJUDGED that the Article 78 petition is denied.

Dated: July 25, 2008

ENTER:



J.S.C.

FILED
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